



MEMO ENDORSED

THE CITY OF NEW YORK
LAW DEPARTMENT
 100 CHURCH STREET
 NEW YORK, NY 10007-2601

MICHAEL A. CARDOZO
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DOCUMENT	
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March 14, 2008

BY HAND DELIVERY

Honorable Lewis A. Kaplan
 United States District Judge
 Southern District of New York
 500 Pearl Street, Rm. 1310
 New York, New York 10007-1312

Re: Costa v. City of New York, et al.,
 07 Civ. 8032 (LAK)(AJP)
 Law Dep't. No.: 2007-029207

Dear Judge Kaplan:

I am an Assistant Corporation Counsel in the office of Michael A. Cardozo, Corporation Counsel of the City of New York, attorney for defendants in the above-referenced action in which plaintiff asserts a "class of one" theory of liability under the Equal Protection Clause. I write for the purpose of seeking clarification concerning the Court's Endorsed Memorandum, which was docketed on March 10, 2008, as Document No. 25. The endorsement, which was issued after the resolution of defendants' motion to dismiss, denied as moot the parties' application to amend the case management plan, and extend the deadlines for completion of discovery, from March 3, to April 18, 2008, and for the submission of a joint pre-trial order and dispositive motions, from April 3, to May 16, 2008.

Background & Procedural History

On November 6, 2007, defendants moved to dismiss the complaint, pursuant to Rule 12(b)(6). By order, dated November 28, 2007, the Court granted defendants' motion, and dismissed the Complaint with leave to re-plead. On December 12, 2007, plaintiff filed an amended complaint and, on December 27, 2007, defendants again moved to dismiss the Amended Complaint for failure to state a claim.

On February 22, 2008, while defendants' motion to dismiss was pending, the parties requested that the Court stay discovery pending resolution of defendants' motion. The Court granted that application on February 28, 2008, and stayed discovery pending a decision on the defendants' pre-answer motion. One day later, on February 29, 2008, the Court decided

HONORABLE LEWIS A. KAPLAN

United States District Judge

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defendants' motion, granting it in part, and denying it in part. Specifically, the Court dismissed plaintiff's constructive discharge claim, but allowed plaintiff "class of one" claim to proceed, and denied Chief Fox qualified immunity.

Defendants filed their answer to the Amended Complaint on March 13, 2008, and have today served their Rule 26(a) initial disclosures, together with several hundred pages of documents. Plaintiff likewise served his Rule 26(a) disclosure on defendants today. In order to conserve resources and avoid what might have been unnecessary discovery, the parties did not exchange document requests or take any depositions while the motion to dismiss and the request for a stay of discovery were pending.

Clarification Concerning the Court's Memo Endorsed

By letter, dated March 3, 2008, the parties submitted a request to amend the case management plan. It is this request which the Court has now denied as moot. The parties have conferred concerning the Court's order and respectfully submit that they are unclear as to whether the stay of discovery is still in place, and if not, the import of the Court's denial of their application to amend the case management plan as moot. It may be that the Court believes the stay to be in place and so denied the extension as moot. If the stay is not in place, then defendants respectfully request reconsideration of the Court's memorandum endorsement denying the request for an extension of the case management schedule as moot.

In the event that the Court determines to hold a conference concerning this matter we note that plaintiff's counsel has indicated he will be away from the office on the following dates: March 23-26, 28, and April 1-4. I will be out of the office from March 19, to March 24, 2008.

We thank the Court for its consideration of this request.

Respectfully submitted,



Ivan A. Mendez, Jr.
Assistant Corporation Counsel

cc: David M. Fish
(By Regular Mail)

*The stay does not remain in effect.
Discovery to be concluded by 5/1/08.
Pretrial order, motions for summary judgment
and requests to change due no later
than 5/22/08*

[Signature]
LEWIS A. KAPLAN, 3/19/08